

ANN BAVENDER*
HARRY F. COLE
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
FRANK R. JAZZO
M. SCOTT JOHNSON*
EUGENE M. LAWSON, JR.
MITCHELL LAZARUS
STEPHEN T. LOVELADY*
SUSAN A. MARSHALL
HARRY C. MARTIN
ALISON J. MILLER
LEE G. PETRO*
RAYMOND J. QUIANZON
MICHAEL W. RICHARDS*
JAMES P. RILEY
KATHLEEN VICTORY
JENNIFER DINE WAGNER*
LILIANA E. WARD
HOWARD M. WEISS

*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

OFFICE: (703) 812-0400

FAX: (703) 812-0486

www.fhhlaw.com

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYSS
U. S. AMBASSADOR (ret.)

OF COUNSEL
DONALD J. EVANS
FRANCISCO R. MONTERO
EDWARD S. O'NEILL*
ROBERT M. GURSS*

WRITER'S DIRECT

DOCKET FILE COPY ORIGINAL (703) 812-0453
petro@fhhlaw.com

January 10, 2005

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Federal Communications Commission
Office of Secretary

By Hand Delivery

Marlene Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

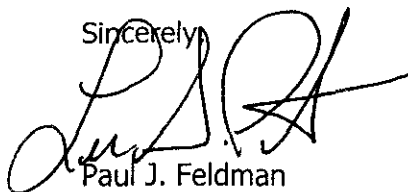
**RE: Petition for Partial Reconsideration
WT Docket Nos. 00-230, 02-68, 03-66, 03-67;
MM Docket No. 97-217
Plateau Telecommunications, Inc., Petitioner**

Dear Ms. Dortch:

Transmitted herewith, is an original and 15 copies of a Petition for Partial Reconsideration of the Report and Order adopted on June 10, 2004, in the above-referenced proceedings, filed on behalf of Plateau Telecommunications, Inc.

Should there be any questions regarding this matter, please contact undersigned counsel.

Sincerely,



Paul J. Feldman
Lee G. Petro

Counsel for Plateau Telecommunications, Inc.

Enclosures

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JAN 10 2005

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of)	WT Docket No. 03-66
the Commission's Rules to Facilitate the)	RM-10586
Provision of Fixed and Mobile Broadband)	
Access, Educational and Other Advanced)	
Services in the 2150-2162 and 2500-2690)	
MHz Bands)	
)	
Part 1 of the Commission's Rules - Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service)	
Amendment of Parts 21 and 74 to Engage in)	
Fixed Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74)	WT Docket No. 02-68
of the Commission's Rules With Regard to)	RM-9718
Licensing in the Multipoint)	
Distribution Service and in the)	
Instructional Television Fixed Service for the)	
Gulf of Mexico)	
)	
Promoting Efficient Use of Spectrum Through)	WT Docket No. 00-230
Elimination of Barriers to the Development of)	
Secondary Markets)	

TO: Office of the Secretary
The Commission

PETITION FOR PARTIAL RECONSIDERATION

Plateau Telecommunications, Inc. ("Plateau"), by and through its attorneys, and pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106 (2003), hereby submits this Petition for Partial Reconsideration of the Report and Order adopted on June 10, 2004, in

the above-referenced proceedings.¹ Plateau is the licensee of three Broadband Radio Service ("BRS") BTA licenses in eastern New Mexico, and has successfully constructed a two-way, broadband network service in its authorized area of operation.

Plateau generally agrees with the technical rules adopted in the *R&O*, and looks forward to the full implementation of the new rules to permit Plateau to fully utilize its licensed spectrum. However, as discussed in more detail below, Plateau strongly urges the Commission to reconsider one element of the transition to the new band plan as adopted in the *R&O*.

Specifically, Plateau seeks reconsideration of the requirement that the transition to the new band plan be based on inclusion of all licensees in a particular Metropolitan Economic Area ("MEA"), and instead urges the Commission to modify its rules to permit the transition based on Basic Trading Areas ("BTA"). Plateau believes that the MEA-based transition plan adopted in the *R&O* will lead to substantial delay, and will force parties to undertake costly and unnecessary analysis that will likely significantly undermine the value of the spectrum.

While the MEA-based transition plan may assist urban markets to transition more quickly, the exact opposite is true in the rural areas, where MEAs often traverse more than three states, and include 20 or more BTAs. Rather than create more uncertainty in a long-troubled portion of the spectrum, the Commission should permit licensees to transition to the new spectrum on a BTA-by-BTA basis so long as they meet the technical specifications and interference protection requirements set forth in the newly-adopted rules.

¹ 19 FCC Rcd 14,165 (2004)(the "R&O"). The *R&O* was adopted on June 10, 2004, but was not released until July 29, 2004. Prior to the publication of the *R&O* in the Federal Register, the Commission released, on its own motion, an Order that adopted "limited" modifications of the *R&O*. See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order, 19 FCC Rcd 22,284, ¶ 1 (2004). The modified *R&O* was published in the Federal Register on December 10, 2004, at 69 Fed Reg 72,020 (Dec. 10, 2004), and a correction was published on January 6, 2005. 70 Fed. Reg. 1189 (Jan. 6, 2005).

BACKGROUND

The rules adopted in the *R&O* fundamentally alter the legal and technical landscape for BRS and Educational Broadband Service ("EBS") licensees. By restructuring the spectrum to eliminate interleaved channels, and by applying the more flexible Part 1 legal and technical rules previously available to other wireless communications services, license holders of this spectrum will be able to develop and introduce new broadband services to the public more rapidly and with substantially less regulatory burden imposed upon the licensee.

A central part of the transition plan is the restructuring of the existing band configuration. Under the plan, parties will have until January 10, 2008, to develop and circulate transition plans to other BRS and EBS licensees in their MEA to move to the new channel assignments in revised band plan. First, the "proponent" will send a "Pre-Transition Data Request" to each licensee in the MEA to request information relating to their technical facilities.²

Once the proponent has received this information, and determined that it wishes to proceed with the transition, it must send a "Transition Notice" to all licensees in the MEA, informing them of the proponent's intention to move forward with the transition, and certifying that it has the requisite level of available funds to pay for the expected costs of the transition.³ Finally, the Proponent must file an "Initiation Plan" with the Commission, which provides notice to the Commission that the licensees in the MEA will be transitioned.⁴

After the Initiation Plan is filed with the Commission, the proponent will have 90 days to prepare and circulate a "Transition Plan" to the licensees in the MEA. Once this Transition Plan is circulated, the proponent will have 18 months to transition the licensees in the MEA, unless it is necessary to engage in the Commission's dispute resolution procedures relating to a

² *R&O*, ¶ 84.

³ *Id.*, at ¶ 85.

⁴ *Id.* at ¶ 86.

counterproposal filed by an affected licensee relating to the proposed Transition Plan.⁵

With respect to the costs associated with the transition, the Commission determined that the proponent will be responsible for transitioning the EBS licensees in the MEA, and that the BRS licensees will be responsible for their own transition costs.⁶ Once the transition of a particular MEA is completed, the proponent and the affected licensees must file a notification with the Commission, informing it that the transition of that market is complete, and providing technical information relating to the post-transition operation of the licensees.⁷

DISCUSSION

While Plateau supports many of the technical changes that the Commission adopted in the *R&O*, the MEA-based transition plan will cause unnecessary hardship on rural broadband service providers. Moreover, the MEA-based transition plan runs counter to the rights and obligations of those licensees that obtained geographic licenses based on BTAs. In light of these factors, the Commission must reconsider the MEA-based transition.

A. THE MEA-BASED TRANSITION PLAN PLACES INORDINATE RESPONSIBILITIES ON RURAL BROADBAND SERVICE PROVIDERS.

As outlined above, if a BRS licensee seeks to fully utilize the flexibility and increased service opportunities permitted under the new rules, it must either wait for another party in the MEA to propose a transition plan, work with one or more parties to transition the MEA on a coordinated basis, or propose a transition plan by itself. While this arrangement might work in more urban settings where the MEAs are smaller and contain relatively fewer licensees, this

⁵ *Id.* at ¶ 89.

⁶ *Id.* at ¶ 93.

⁷ *Id.* at ¶ 101.

plan simply can not work in rural America.

For example, Plateau is the licensee of three BTAs in eastern New Mexico,⁸ and one Partitioned Service Area ("PSA") consisting of two counties obtained from the licensee of BTA 13.⁹ While each of the geographic licenses are adjacent, the Clovis BTA and the PSA are located in MEA #32, whereas the Roswell BTA and Carlsbad BTA are located in MEA #39.

Plateau has already constructed a seamless two-way broadband network utilizing the E & F channel groups in all four geographic areas, and, in one short year, has initiated service to more than 4,200 subscribers. To its subscribers, Plateau's network is not based on BTA or MEA borders, but rather is only measured by the superior service that it provides.

Under the Commission's MEA-based plan, though, if Plateau wants to take full advantage of the new rules, it must (i) research and contact the licensees located in 25 BTAs in seven states, stretching from Arizona to Louisiana, including those in Arkansas, Colorado, Oklahoma, and Texas, (ii) request that these licensees forward information on their current technical facilities, and then (iii) develop a transition plan whereby it would be required to fund the transition costs of the EBS licensees in these areas.

Alternatively, it could wait until another proponent in both MEAs steps forward to transition the markets, or Plateau could attempt to partner with another party in one of the numerous BTAs to transition the MEA. Even if it partnered with another party, Plateau would still be required to share in the costs of developing the transition plan, and paying a portion of the EBS-transition costs for licensees located hundreds of miles from its own service area. Thus, for Plateau to take full advantage of the new rules in the near future, it must assume the exorbitantly expensive role as the proponent in two MEAs, or put its business plan on hold to

⁸ BTA068-Carlsbad, BTA087-Clovis, and BTA386-Roswell.

⁹ Plateau acquired PSA rights to Quay and Union counties in New Mexico.

wait for one or more “deep pocket” proponents to step forward.

These options, though, are inconsistent with the oft-stated goal of the Commission to encourage the rapid development of broadband service in rural areas.¹⁰ Recently, the Commission adopted a definition of “rural” that is applicable to the entire service area licensed to Plateau. Specifically, in the *Rural Report and Order*, the Commission adopted a new “baseline definition of ‘rural area’ as those counties (or equivalent) with a population density of 100 persons per square mile or less.”¹¹ The Commission also concluded that licensing schemes based on smaller service areas “provide entry opportunities for smaller carriers, new entrants, and rural telephone companies.”¹²

This decision follows the Commission’s original determination in 1995 that it would adopt BTA-based geographic licenses for competitive bidding process for MDS, finding that a BTA-based licensing scheme would make “the initial cost of acquiring the authorization through competitive bidding lower, and therefore providing greater opportunity for participation by small businesses, female and minority entrepreneurs and rural telephone companies.”¹³

¹⁰ See, e.g., *In the Matter of Facilitating the Provisions of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; 2000 Biennial Regulatory Review-Spectrum Aggregation Limits for Commercial Mobile Radio Services; Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19,078, ¶ 4 (2004) (“*Rural Report and Order*”).

¹¹ *Id.* at ¶ 11. The Commission developed a table that provides, *inter alia*, the total population and population density figures for those areas that meet the new threshold definition. See [http://wireless.fcc.gov/resources/rural area](http://wireless.fcc.gov/resources/rural%20area) (last visited January 9, 2005).

¹² *Id.* at ¶ 31 (citing *Service Rules for Advanced Wireless Services in the 1.7 and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25,162, 25,177 (2003)).

¹³ See *Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Filing Procedures in the Multipoint Distribution Service & in the Instructional Television Fixed Service*, Report and Order, 10 FCC Rcd 9,589, 9605 (1995) (“the cost of acquiring an ADI authorization through competitive bidding, building systems and marketing services in the larger ADIs may unnecessarily restrict entry.”).

Every county within Plateau's licensed service area qualifies under the Commission's "rural" definition. In fact, 31 of the 34 counties (91%) that comprise MEA #39 qualify for "rural" status, and 179 of the 204 counties (85%) that comprise MEA #32 also qualify for "rural" status.

In light of the Commission's determination that smaller service areas would foster entry opportunities in rural areas, the decision to transition EBS and BRS markets based on MEAs, which disproportionately aggregate large swaths of rural areas into one geographic unit, places extreme and unnecessary expenses on BRS licenses in these areas, and will substantially undermine the rapid transition to the new spectrum band.

Very few licensees in these areas will have the financial capabilities to research and manage the transition over an entire MEA area. Instead, these licensees will have to defer taking advantage of the new rules, and flexibility that these rules provide, until such time that a "deep pocket" proponent decides to transition the MEA. However, given the largely rural nature of both MEAs in which Plateau operates, it is unlikely that such proponents will have the economic incentive to rapidly transition these markets in near future.

B. THE MEA-BASED TRANSITION PLAN EVISCERATES THE RIGHTS AND PRIVILEGES ASSOCIATED WITH THE BTA LICENSES.

As discussed above, licensees located in largely rural areas will be forced to wait to take full advantage of the new rules until such time that other parties decide to transition their MEAs. While the impact of this delay will affect all BRS and EBS licensees, those licensees that hold BTA rights will face a disproportionate and unjust harm.

Specifically, BTA licensees obtained their licenses during Auction #6, or from parties that participated in Auction #6, and were required to pay a premium for the right to construct in any portion of the BTA that was unused by an incumbent licensee. Once the Commission adopted

its two-way broadband rules in 2000,¹⁴ BTA licensees were able to commence operation of their two-way broadband systems so long as interference was not caused to licensees in adjacent BTAs.

After obtaining the BTA rights in Carlsbad, Clovis, Roswell and Tucumcari in 2003, Plateau has taken full advantage of the two-way broadband rules, and constructed one of the first, non-line-of-sight two-way broadband systems in the country. Central to its ability to construct and modify its system in response to growing demand was the opportunity to make full-use of its spectrum under the Commission's rules by, for example, adding additional sites within its service area to increase the capacity of the system. However, the current rules require Plateau to prepare costly studies, file an application, wait for Commission authorization, and then pay an additional fee once the system is constructed.

Once the new band plan adopted in the *R&O* is implemented, though, Plateau will be able to more fully utilize the spectrum it acquired, and provide additional services to its customers without facing the costly bureaucratic delay. Instead, the rules adopted in the *R&O* will permit Plateau to modify its facilities to meet customer demand without filing applications, or paying completion of construction costs that can total more than \$1,000 per two-way link.

However, despite holding rights to the entire unused portions of the area within its four licensed geographic areas, Plateau will be forced to sit idly by until a proponent, or several proponents, with the financial capability to transition licensees in seven states, steps in to transition the two MEAs in question before it can take advantage of the new band plan, which is the greatest benefit of the new rules.

¹⁴ See *Amendment of Parts 1, 21, and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking, 15 FCC Rcd 14,566 (2000).

Moreover, unless this artificial delay imposed by the Commission is removed, it is not likely that one or more proponents will transition the two MEAs in question in the near future. First, the two MEAs are largely rural, with 88% of the counties meeting the Commission's threshold definition. Making matters worse, the licenses for five of the eight BTAs that comprise MEA #39 have been cancelled and will be likely assigned in a future auction.¹⁵ Neither Plateau, nor any other party, will have the incentive to propose the transition in MEA #39 until the Commission holds an auction for those licenses, since a large portion of the MEA consists of areas outside the current authorized service area of the existing licensees, and the ultimate distribution of the geographic rights in the MEA are unknown at this time.¹⁶

Therefore, despite paying a substantial amount of money to purchase the rights to the three BTAs and one PSA it currently holds, Plateau's ability to fully maximize both the capacity of the spectrum for which it holds licenses, and the underlying value of the spectrum, will be substantially undermined due to the Commission's decision to impose the MEA-based transition.¹⁷

CONCLUSION

Plateau Telecommunications, Inc., applauds the hard work and forward-thinking band plan as adopted by the Commission. It eagerly awaits the opportunity to take full advantage of the new band plan, and has lease agreements in place with a large majority of the EBS licensees located in its service area to further implement the Commission's goal of bringing broadband service to rural areas.

¹⁵ The licenses in BTA 008, 139, 162, 244, and 407 were obtained by Multimedia Development Corporation in MDS Auction #6. In 2003, the licensee defaulted on its installment payments, and in 2004, the Commission cancelled the licenses.

¹⁶ Also, BTA #264 appears to be divided between MEA #32 and #39, which could further complicate the transition process in this largely rural area.

¹⁷ Alternatively, the Commission could permit BTA licensees in qualifying rural areas to transition on a BTA-by-BTA basis, and maintain the MEA-based transition for urban areas.

However, the MEA-based transition is flawed on many accounts, and will impose substantial hardship and delay on the very licensees the new band plan was intended to assist. Rather than (i) empowering rural licensees to rapidly transition to the new band plan, and (ii) fostering the speedy introduction of broadband service in rural areas, the MEA-based transition plan will force many rural licensees to either expend exorbitant funds to transition markets in which they have no right to operate, or to wait patiently for some other party to enter the market to cover such costs. Further, the MEA-based plan will undermine the rights afforded to geographic licensees such as Plateau by restricting their ability to fully realize the benefits of the new rules within their authorized service area until after the MEA-based transition is completed.

Therefore, Plateau requests that the Commission reconsider the adoption of MEA-based transition rules, and instead, urges the Commission to adopt rules that would permit the transition in the same manner in which the licenses were issued, *i.e.*, on a BTA-by-BTA basis. Only in this way will the Commission's goals of an ubiquitous rural broadband service be realized, which would better serve the public interest.

Respectfully submitted,

PLATEAU TELECOMMUNICATIONS, INC.

By: 

Paul J. Feldman, Esquire
Lee G. Petro, Esquire
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
703-812-0400 - Telephone
703-812-0486 - Telecopier
Its Attorneys

January 10, 2005